

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS MURRAY,	:	
Plaintiff	:	CIVIL NO. 4:06-CV-2443
v.	:	
	:	(Judge McClure)
JONATHAN MINER,	:	
WARDEN,	:	
Defendant	:	

ORDER

February 8, 2007

BACKGROUND:

Plaintiff is an inmate at the Allenwood Low Security Correctional Institution in White Deer, Pennsylvania (“LSCI-Allenwood”). He filed this 28 U.S.C. § 2241 habeas petition, *pro se*, on December 21, 2006. Plaintiff is currently serving a 151 month sentence and is scheduled to be released January 15, 2008. He requests the court order him to be placed in a Community Confinement Center (“CCC”) for the remainder of his sentence, so that he can become better prepared to rejoin society.

This matter was initially referred to United States Magistrate Judge Thomas M. Blewitt.

On January 12, 2007, the magistrate judge issued his thorough nine page report and recommendation. The magistrate judge recommends that the court dismiss plaintiff’s petition under Rule 4 of the Rules Governing Section 2254

Cases in the U.S. District Courts (applicable to § 2241 cases under Rule 1(b)), and offers two reasons supporting this conclusion. First, the magistrate judge notes that the plaintiff has not fully exhausted his administrative remedies, and reasons doing so would not be futile. Second, the magistrate judge concludes that even if plaintiff's petition was ripe, it lacks merit because a prisoner is not entitled for consideration for placement into the CCC until the last six months of his incarceration. See 18 U.S.C. § 3624(c). Because plaintiff has more than six months left to serve, the magistrate judge finds he is not entitled to consideration for CCC placement and therefore plaintiff's petition should be summarily dismissed.

On January 23, 2007, the plaintiff timely filed his objections to the magistrate judge's report and recommendation. The plaintiff argues that exhausting his remedies would be futile because it would take at least six months for him to exhaust his remedies, and by that time his petition would become moot. He also argues that the authority relied upon by the magistrate judge in concluding that plaintiff is not entitled to CCC consideration is suspect. Rather, plaintiff argues that Woodall v. Federal Bureau of Prison, 432 F.3d 235 (3d Cir. 2005) supports his position.

DISCUSSION:

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

We will adopt the magistrate judge's report and recommendation in full. We agree with the magistrate judge that plaintiff's petition is premature because he has not yet fully exhausted his administrative remedies, and that exhausting such remedies would not be futile. Further, we also agree that even if plaintiff's petition was ripe, it lacks merit. Both Pacitti v. Lindsay, 2006 U.S. Dist. LEXIS 27447, at *6 (M.D. Pa. May 8, 2006) and White v. Hogsten, 2006 U.S. Dist. LEXIS 46097, at *1 (M.D. Pa. July 6, 2006) - cases relied upon by the magistrate judge - establish that plaintiff is not entitled to consideration for CCC placement until, at most, the last six months of his incarceration. See also 18 U.S.C. § 3624(c). Woodall does not contradict the holding in either Pacitti or White. For these reasons and the reasons stated in the magistrate judge's report and recommendation, we will summarily dismiss plaintiff's habeas petition.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The United States Magistrate Judge Thomas M. Blewitt's Report and Recommendation is adopted in full for the reasons set forth herein.

(Rec. Doc. No. 4).
2. Plaintiff's 28 U.S.C. § 2241 habeas petition is summarily dismissed under Rule 4 of the Rules Governing Section 2254 Cases. (Rec. Doc. No. 1).
3. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge